

**DRAFT**  
**Subject to Legal Review for Clarity and Consistency**  
**April 3, 2003**

**Chapter Fifteen**

**Electronic Commerce**

**Article 15.1: General Provisions**

1. The Parties recognize the economic growth and opportunity provided by electronic commerce and the importance of avoiding unnecessary barriers to its use and development.
2. Nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.
3. This Chapter is subject to any other relevant provisions, exceptions, or non-conforming measures set forth in other Chapters or Annexes of this Agreement.

**Article 15.2: Electronic Supply Of Services**

The Parties recognize that the supply of a service using electronic means falls within the scope of the obligations contained in the relevant provisions of Chapter Eleven (Cross-Border Trade in Services) and Chapter Twelve (Financial Services), subject to any non-conforming measures or exceptions applicable to such obligations.<sup>1</sup>

**Article 15.3: Customs Duties On Digital Products**

Neither Party may apply customs duties on digital products of the other Party transmitted electronically.

**Article 15.4: Non-Discrimination For Digital Products**

1. A Party shall not accord less favorable treatment to a digital product than it accords to other like digital products, on the basis that:
  - (a) the digital product receiving less favorable treatment is created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party; or

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<sup>1</sup>For greater certainty, nothing in this Chapter imposes obligations to allow the electronic supply of a service nor the electronic transmission of content associated with those services except in accordance with the provisions of Chapter Eleven (Cross-Border Trade in Services) and Chapter Twelve (Financial Services), including their Annexes (Non-Conforming Measures).

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- (b) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party.<sup>2</sup>
- 2.
  - (a) A Party shall not accord less favorable treatment to a digital product created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to a like digital product created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party.
  - (b) A Party shall not accord less favorable treatment to digital products whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.
- 3. A Party may maintain an existing measure that does not conform with paragraph 1 or 2 of this Article for one year after the date of entry into force of this Agreement. A Party may maintain the measure thereafter, if the treatment the Party accords under the measure is no less favorable than the treatment the Party accorded under the measure on the date of entry into force of this Agreement, and the Party has set out the measure in its Schedule in Annex 15.4. A Party may amend such a measure only to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with paragraphs 1 and 2.

**Article 15.5: Cooperation**

Having in mind the global nature of Electronic Commerce, the Parties recognize the importance of:

- (a) working together to overcome obstacles encountered by small and medium enterprises in the use of electronic commerce;
- (b) sharing information and experiences on regulations, laws, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence, cyber-security, electronic signatures, intellectual property rights, and electronic government;

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<sup>2</sup>For greater certainty, if one or more of the criteria of paragraph 1(a) or (b) is satisfied, the obligation to accord no less favorable treatment to that digital product applies even if one or more of the activities listed in paragraph 1(a) occurs outside of the territory of the other Party, or one or more persons listed in paragraph 1(b) are persons of the other Party or a non-Party.

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- (c) working to maintain cross-border flows of information as an essential element for a vibrant electronic commerce environment;
- (d) encouraging the development by the private sector of methods of self-regulation, including codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and
- (e) actively participating in international fora, at both a hemispheric and multilateral level, with the purpose of promoting the development of electronic commerce.

**Article 15.6: Definitions**

For purposes of this Chapter:

**digital products** means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and transmitted electronically, regardless of whether a Party treats such products as a good or a service under its domestic law;<sup>3</sup>

**electronic means** means employing computer processing; and

**electronic transmission or transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means.

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<sup>3</sup>For greater certainty, digital products do not include digitized representations of financial instruments, including money. The definition of digital products is without prejudice to the on-going WTO discussions on whether trade in digital products transmitted electronically is a good or a service.